



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11
Burlington, Vermont 05401
(802) 865-7122

**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION


Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Marie & Peter Wall
George Harrington

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of MARIE and)
PETER WALL Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by GEORGE) HOUSING BOARD OF REVIEW
HARRINGTON for Rental Unit at 142)
Sandra Circle)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Marie and Peter Wall were present and testified. Respondent George Harrington was also present and testified.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent George Harrington is the owner of a rental unit, 142 Sandra Circle, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Peter and Marie Wall moved into the rental unit on July 1, 2014 under the terms of a written lease. Monthly rent was \$1300.00 with a \$50.00 discount being given for rent received on or before the first of each month.
3. Petitioners paid a security deposit of \$1250.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on February 29, 2016.
5. On March 11, 2016, respondent sent a written statement to petitioners' last-known address (the address of the rental unit) in conformance with ordinance requirements. Said statement itemized deductions totaling \$168.00. Interest in the amount of \$25 was credited to the deposit, as was \$25.00 for a thermostat. The amount of the security deposit returned to petitioners was \$1132.00.

6. Both parties testified concerning the tub handle which appeared as a \$63.00 deduction on the itemized statement. The tub handle was replaced 12-18 months prior to petitioners moving out of the apartment after they complained about it. The handle fell off again and petitioners replaced it, but at the end of the tenancy it broke again; petitioners purchased and installed a new handle and left it in the apartment for respondent. Respondent replaced the handle purchased and installed by petitioners at a cost of \$63.13, as evidenced by a receipt from The Home Depot.

7. Both parties testified concerning the cracked bathroom sink counter which appeared as a \$55.00 deduction on the itemized statement. The counter cracked during petitioners' tenancy. Respondent attributed the damage to petitioners. According to petitioners, respondent admitted in conversation that the counter was improperly installed (it was not level) which resulted in it cracking when they lightly leaned on the edge of it. Respondent denied making this comment and speculated that the counter broke upon being forcefully hit.¹

8. Respondent charged petitioners \$50.00 for his time to make the repairs.

CONCLUSIONS OF LAW

9. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

10. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

11. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the

¹ Respondent supported his testimony by a demonstration that involved his repeatedly hitting the table with excessive force. Accordingly, respondent's testimony on this point is difficult to hear on the audio recording.

opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by certified mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Proper notice was provided.

12. Based on the evidence and testimony, the Board concludes the deductions were not proper. The broken tub handle was attributable to normal wear and tear. Moreover, the Board credits petitioners' testimony that the cracked counter resulted from it not being properly installed. Consequently, both the cost of materials and the deduction for respondent's labor to make repairs were not proper.

ORDER


Accordingly, it is hereby ORDERED:

13. Petitioners Peter and Marie Wall are entitled to recover from respondent George Harrington the following amounts:


- a) \$168.00 of the principal amount of the deposit improperly withheld after March 14, 2016; and
- b) Additional interest of \$0.001 per day from March 15, 2016 until such date as the amount improperly withheld is returned to petitioners.

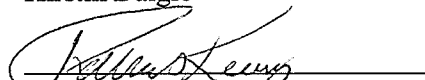
DATED at Burlington, Vermont this 20th day of April, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traversé


Jason L. Ecyer


Kirstin Daigle


Patrick Kearney